IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1397/2007

Reserved on.12.9.2007

Decided on.14.9.2007

Dreamz College of Pharmacy and another. …Petitioners.

Versus

State of H.P. & others. …Respondents

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting ?[1]*. yes.*

For the petitioner :	Mr. R.L. Sood, Sr, Advocate with Mr. Vikas Rajput and Sanjeev Kumar, Advocates.
For the respondents	Mr. M.S. Chandel, Advocate General with Mr. J.K. Verma, Deputy Advocate General for respondent No.1 and 2.
	Mr. V.D. Khidta, Advocate for respondent No.3.
	Mr. S.R. Sharma, Advocate for respondent No.4

Per Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioners' college i.e. Dreamz College of Pharmacy has been established by Dreamz Educational Society registered under the Societies Registration Act, 1860 (hereinafter referred to as the petitioner for brevity sake). The petitioner submitted an application to the regional office of the All India Council for Technical Education (hereinafter referred to as the AICTE) seeking approval to start a pharmacy college. The petitioner received a letter on 24.4.2006 from the respondent No.2 calling upon it to submit application in the prescribed proforma for grant

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***?

of no objection certificate. The AICTE sent a communication dated 9.5.2006 to the petitioner to remove certain deficiencies as pointed out in the communication. The petitioner informed the AICTE vide communication dated 8th March, 2007 that the deficiencies pointed out in the communication dated 9.5.2006 had been removed. Respondent No.4 i.e. AICTE addressed a letter dated 27.3.2007 to the Vice Chancellor of the respondent No.3 University soliciting its views in respect of the proposal of the petitioner for commencing B-Pharmacy Course for the academic session 2007-08. Respondent No.4 issued a letter of intent in favour of the petitioners on 25th May, 2007. Petitioner addressed communication to respondent No.3 University on 14th June, 2007 for grant of affiliation in its favour for commencing B-Pharmacy Course for the academic session 2007-08. The inspection team sent by the AICTE visited the petitioner college on 10th August, 2007 for grant of approval. The inspection was carried out by the duly constituted committee and consequently the letter of approval was issued in favour of the petitioner on 14th August, 2007. Petitioner sent a communication to respondent No.3 University on 23rd August, 2007 enclosing a demand draft of Rs. 50,000/- as inspection/affiliation fee.

In sequel to letter dated 23rd August, 2007, respondent No.3 had requeuested the petitioner to send another bank draft of Rs. 50,000/- in favour of the Finance Officer, H.P. University alongwith 'NOC' of the Government for the academic session 2008-09 and in the absence of 'NOC' issued by the State Government, the grant of affiliation to start B-Pharmacy Course for the academic session 2007-08 could not be considered.

Mr. R.L. Sood, Sr. Advocate had strenuously argued that the University could not withhold the affiliation after the approval accorded in

favour of the petitioner on 14th August, 2007. He also contended that the All India Council for Technical Education Act, 1987 and the Regulations framed thereunder will prevail over the provisions of the H.P. University Act, 1970 and the State could not insist for obtaining the 'NOC' from it.

The learned Advocate General submitted that for maintaining higher standards in education it was imperative for the petitioner to obtain 'NOC' from the State Government.

Mr. V.D. Khidta, Advocate appearing on behalf of the respondent-University submitted that the affiliation could be granted only after the petitioner had annexed with the application "NOC" from the State Government since the petitioner had failed to produce the "NOC", the affiliation could not be granted and to that effect the petitioner had already been informed vide communication dated 30th August, 2007 and the University can only consider the case of the petitioner for grant of affiliation for academic session 2008-09 with a rider that the application should be accompanied with the 'NOC' issued by the State Government. Mr. Khidta also submitted that the counselling was over on 14th August, 2007 and no admission can be made after the date prescribed.

Mr. S.R. Sharma, Advocate submitted that the approval has been accorded to the petitioner strictly as per the provisions of the AICTE Act and the University has to grant affiliation.

I have heard the learned counsel for the parties and perused the record.

The following points arise for consideration in this petition on the basis of the rival submissions of the learned counsel for the parties:

1. **Whether the provisions of the All India Council for Technical Education Act, 1987 occupied the field and was it necessary for the petitioner to obtain the 'NOC'**

from the State Government for the purpose of affiliation?

2. **Whether the University should have granted the affiliation to the petitioner's institute merely on the basis of the permission accorded by the All India Council for Technical Education dated 14th August, 2007?**
3. **Whether the University can validly refuse to permit the institute to start the course after the counselling was over on 14th August, 2007?**

Before the afore-mentioned points are taken up for consideration in detail, it will be apt to consider the relevant provisions of All India Council for Technical Education Act, 1987 (hereafter referred to as the Act).

The All India Council for Technical Education Act, 1987 has been enacted by the Parliament for the establishment of an All India Council for Technical Education with a view to the proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system. Chapter-III of the Act deals with powers and functions of the Council. Section 10 enumerates the functions to be discharged by the Council which read thus:

> **"10. It shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the Council -**
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> **(a) undertake survey in the various fields of technical education, collect data on all related matters and make**

forecast of the needed growth and development in technical education;

(b) co-ordinate the development of technical education in the country at all levels;

(c) allocate and disburse out of the Fund of the Council such grant on such terms and conditions as it may think fit to-

i. technical institutions, and

ii. Universities imparting technical education in co-ordination with the Commission;

(d) promote innovations research and development in established and new technologies, generation, adoption and adaptation of new, technologies to meet developmental requirements and for overall improvement of educational processes;

(e) formulate schemes for promoting technical education for women, handicapped and weaker sections of the society;

(f) promote an effective link between technical education system and other relevant systems including research and development organizations, industry and the community;

(g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability;

(h) formulate schemes for the initial and in-service training of teachers and identify institutions or centres and set up new centres for offering staff development programmes including continuing education of teachers;

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

(j) fix norms and guidelines for charging tuition and other fees;

(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

(l) advice the Central Government in respect of charter to any professional body or institution in the filed of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examination and awarding of membership certificates;

(m) lay down norms for granting autonomy to technical institutions;

(n) take all necessary steps to prevent commercialization of technical education;

(o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;

(p) inspect or cause to inspect any technical institution;

(q) withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of the Council;

(r) take steps to strengthen the existing organizations and to set up new organization to ensure effective discharge of the Council's responsibilities and to create positions of professional, technical and supporting staff based on requirements;

(s) declare technical institutions at various levels and types offering courses in technical education fit to receive grants;

(t) advice the Commission for declaring any institution imparting technical education as a deemed University;

(u) set up a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it, or to the Council or to the Commission or to the

other bodies, regarding recognition or derecognition of the institution or the programme;

(v) perform such other functions as may be prescribed.

Section 22 empowers the Central Government to frame the Rules to carry out the purposes of this Act. Section 23 empowers the Council to frame regulations for better regulation of the profession and practice of pharmacy.

The Legislative Assembly of Himachal Pradesh has enacted the Act called "The H.P. University Act, 1970". Section 32 deals with conditions for affiliation. Statute 16 of the First Statute of the H.P. University Act, 1970 deals with affiliation privileges of the University. The same reads thus:

(1) Colleges and other institutions within the limits of Himachal Pradesh may be admitted to such privileges of the University as the Executive Council may decide on the following conditions namely:-

(i) Every College or institution seeking privilege of affiliation or association shall have regularly constituted management, consisting of not more than twenty persons of which the composition shall be as provided in H.P. University Ordinances.

The rules pertaining to all matters concerning the working and the management of the college/institution and those relating to the personnel of the management shall conform to the Statutes and the Ordinances of the University as also to the conditions of the Government grants. Such rules and personnel will require the approval of the Executive Council;

Provided that the college and institutions admitted to the privileges of the university under Section 7 of the Act shall adopt the rules regarding the constitution of the management within one year of the enforcement of the Act.

Provided further that the said condition shall not apply in the case of colleges and institutions maintained by the Government which shall, however, have an Advisory Committee which shall consist of among others, at least three teachers including the Principal of the college or institution, and two representatives of the University.

(ii) As a condition of affiliation/association and continuation of affiliation/association, management of every such college or institution shall satisfy the Executive Council in the following points, mainly:-

a) that the college or institution is established on a permanent and sound footing;

b) that it has the requisite land and buildings or funds necessary to acquire or construct the same;

c) adequacy of equipment for teaching;

d) adequacy of teaching staff, its qualifications and conditions of service;

e) adequacy of arrangements for the residences, welfare, discipline and supervision of students;

f) that an adequate financial provision is available for its efficient maintenance and functioning in the form of an endowment or a promise of grant-in-aid from the State Government or both; and

g) such other matters as are essential for the maintenance the standards of University education.

(iii) No college or institution shall be admitted to any privileges of the University except on the recommendations of a Committee of Inspection as may be provided in the Ordinances.

(iv) Organizations/colleges and institutions desirous of admission to any privileges of the university shall be required to intimate their intention to do so in writing so as to reach the Registrar not later than the date, as may be provided in the ordinances.

(v) A college may not, without the permission of the Executive Council, suspend instruction in any subject or course of study which it is authorized to teach and teaches.

(vi) The University will consider the request of any private college/institution only after the concurrence of Government is received and attached with the application for grant of affiliation/association.

(2) Appointments to the teaching staff of such college or institution shall be made on the recommendation of a Selection Committee as provided by the Ordinances:

Provided that the provisions of this clause shall not apply in the case of college and institutions maintained by the Government.

(3) Every such college and institution shall be inspected once every year for the first three years following the grant of privilege of affiliation/association and thereafter at least once every two years by a committee consisting of a nominee of the Chancellor, who shall be the Chairman thereof, Dean(s) of Faculty (ies) concerned and a nominee of the Vice-Chancellor. The report of the Committee shall be submitted to the Vice-Chancellor who shall forward the same to the Executive Council with any observations and recommendations as he may deem fit. The Executive Council, after considering the observations and recommendations of the Vice-Chancellor shall cause a copy of report of the Committee to be forwarded to the management of the Institution or college for such action as it may be pleased to direct.

(4) The Executive Council may withdraw any privileges granted to a college or institution if at any time it considers that the college or institution is not fulfilling the requisite conditions;

Provided that before any privileges are so withdrawn the management shall be given an opportunity to represent to the Executive Council why such action shall not be taken.

(5) Subject to the conditions set forth above, the Ordinances may prescribe such other conditions as may be considered

necessary and also the procedure for the admission of the colleges and institutions to the privileges of the University and for the withdrawal of these privileges.

The University has also framed Ordinances dealing with the affiliation and recognition of the Colleges and Institutions. Ordinance 38.2 being relevant is reproduced as under:

38.2. Every application for affiliation or recognition of a new college or for starting courses of instruction in a new Faculty must reach the Registrar not later than the 30th June of the year preceding that in which the college or institution is proposed to be affiliated or recognized;

Provided that the Vice-Chancellor may allow an application to be entertained upto the 31st December of the year preceding the year in which the affiliation or recognition is sought, if he is satisfied that the necessary buildings, playgrounds, hostel facilities, equipment, library and furnitures exit or can be made available before the start of the academic session.

Ordinances 38.6 (h) and (i) provide that the concurrence of the Government stating clearly that the case of the institution be pursued by the university for grant of affiliation/extension of affiliation. Ordinance 38.6 (h) and (i) read thus:

38.6 (h) a statement showing the financial resources of the college, including income from different sources, under the heads fees, interests on endowment fund, rent from property, if any, donations, if any, grants expected to be received from various quarters together with the basis on which such grants have been estimated, and any other source of income as also a statement of the estimated annual income and expenditure;

(i) "The concurrence of Government stating clearly that the case of institution be pursued by the university for grant of affiliation/extension of affiliation."

Points 1 to 3:

Since all the three points are inter-connected, therefore, they can be conveniently discussed together.

The All India Council for Technical Education Act, 1987 has been enacted by the Parliament under Entry 66 of List 1 of Schedule VII of the Constitution of India to provide for the establishment of an All India Council for Technical Education with a view to the proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system throughout the country.

The petitioner had submitted an application to All India Council for Technical Education. The application was processed and the deficiencies pointed out were removed by the petitioner. The Council had also sent a communication to the University on 27th March, 2007 calling upon it to forward the views within 30 days from the receipt of the proposal. The petitioner had taken up the matter with the University on 14th June, 2007 for granting of affiliation and also entered into correspondence with the University after the receipt of the approval from the All Indian Council for Technical Education on 23rd August, 2007. The case of the petitioner for grant of affiliation has been rejected for academic session 2007-08 only on the ground that the petitioner had not enclosed the copy of 'NOC'. Once the field is occupied under Entry No.66 of List 1 of Schedule VII of the Constitution of India under which the Central Act i.e. " the All India Council for Teacher Technical

Education Act, 1987" has been framed, the State Government has no role to play. The insistence of the 'NOC' by the State as well as by the University was without any authority of law. The question whether the State-University could encroach upon the occupied filed as per the provisions of the All India Council for Technical Education Act, 1987 is no more *res integra* in view of a very exhaustive judgments of the Hon'ble Supreme Court in 1995 (4) SCC 104. Their Lordships while dealing with All India Council for Technical Education Act, 1987 vis-à-vis T.N. Private Colleges (Regulation) Act and Rules and Madras University Act in ***State of T.N. and another Versus Adhiyaman Educational & Research Institute and others***, (1995) 4 SCC 104 have held as under:

> **"A comparison of the Central Act and the University Act will show that as far as the institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the Council and the University. Under Section 10 of the Central Act, it is the Council which is entrusted with the power, particularly to allocate and disclose grants, to evolve suitable performance appraisal systems incorporating norms and mechanisms for maintaining accountability of the technical institutions, laying down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing norms and guidelines for charging tuition fee and other fees, granting approval for starting new technical institutions or introducing new courses or programmes, to lay down norms or granting autonomy to technical institutions, providing guidelines for admission of students, inspecting or causing to inspect colleges, for withholding or discontinuing of grants in respect of courses and programmes, declaring institutions at various levels and types fit to receive grants, advising the Commission constituted under the Act for declaring technical educational institutions as deemed universities, setting up of National Board of Accreditation to periodically conduct evaluation on**

the basis of guidelines and standards specified and to make recommendations to it or to the Council or the Commission or other bodies under the Act regarding recognition or de-recognition of the institution or the programme conducted by it. Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the engineering colleges. As has been pointed out earlier, the Central Act has been enacted by Parliament under Entry 66 of List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act."

Shri P.P.Rao, the learned counsel appearing for the appellants, however, contended that while it may be open for the Council to lay down the minimum standards and requirements, to achieve the object as mentioned in Entry 66, it does not debar the State from prescribing higher standards and requirements while making a law under Entry 25 of List III. According to him, further, that is what both the State Act and the University Act purport to do. He, further, contended that the University has an exclusive power to affiliate or not to affiliate and to disaffiliate the colleges. That power cannot be taken away by the Central Act and in fact, it has not done so.

As pointed out earlier, so far as technical institutions are concerned, the norms and standards and the requirements for their recognition and affiliation respectively that the State Government and the University may lay down, cannot be higher than or be in conflict and inconsistent with those laid down by the Council under the Central Act. Once it is accepted that the whole object of the Central act is to determine and coordinate the standards of technical education throughout the country, to integrate its development and to maintain certain standard in such education, it will have to be held that such norms, standards and requirements etc. will have to be uniform throughout the country. Uniformity for the purposes of coordinated and integrated development of technical education in the country necessarily implies a set of minimum standards the fulfillment of which should entitle an institution and its alumni, titles, degrees and certificates to recognition anywhere in the country. It is true that the higher than the minimum standard implies compliance with the minimum standard. But as has been aptly pointed out by Justice Rau while dealing with the meaning of repugnancy in G.P.Sterwart v. Brojendra Kishore Ray Chaudhury which is a decision approved by this Court in Tika Ramji v. State of U.P.

"It is sometimes said that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one says "do" and the other "don't", there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test; there may well be cases of repugnancy where both laws say "don't" but in different ways. For example, one law may say "No person shall sell liquor by retail, that is, in quantities of less than five gallons at a time". Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely the second one; yet it is

equally obvious that the two laws are repugnant, for to the extent, to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified. This was the type of repugnancy that arose for consideration in Attorney General for Ontario v. Attorney General for the Dominion of Canada."

What emerges from the above discussion is as follows:

(i) The expression 'coordination' used in Entry 66 of the Union List of the seventh schedule to the Constitution does not merely mean evaluation. It means harmonization with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plaint and express intention.

(ii) To the extent that the state legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the state legislation being repugnant to the central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be

determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognize or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally.

Similarly, the provisions of the All India Council for Technical Education Act, 1987 vis-à-vis Kerala University Act came for consideration before the Hon'ble Supreme Court in ***Jaya Gokul Education Trust Versus Commissioner and Secretary to Government High Education Department, Thiruvanathapuram, Kerala State and another***, (2000) 5 SCC 231. Their Lordships had framed the following two questions for consideration:

(1) Whether in view of the judgment of this Court in State of T.N. Versus Adhiyaman Educational & Research Institute the provisions of the AICTE Act, 1987 occupied the field and it was not necessary to obtain the further approval of the Government or other authority? Whether any statute in the State of Kerala if it required such approval, would be void?

(2) Whether the orders of rejection passed by the State Government were valid on merits and whether the University should have granted further orders to continue the affiliation solely on the basis of AICTE permission?

While discussing point No.1, their Lordships have held as under:

As held in T.N. case the Central Act of 1987 and in particular, section 10(k) occupied the field relating to "grant of approvals" for establishing technical institutions and the provisions of the central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular statute 9(7), they merely required the University to obtain the "views" of the State Government. That could not be characterized as requiring the "approval" of the State Government. If, indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of section 10(k) of the AICTE Act, 1987 and would again be void. As pointed out in T.N. case there were enough provisions in the Central Act for consultation by the Council of AICTE with various agencies, including the state Governments and the universities concerned. The state-Level Committee and the central regional Committees contained various experts and State representatives. In case of difference of opinion s between the various consultees, AICTE would have to go by the views of the central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in T.N. case it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University could not be inconsistent with the provisions of the Central Act. The

University could not, therefore, in any event have sought for "approval" of the State Government.

Thus we hold, in the present case that there was no statutory requirement for obtaining the approval of the state Government and even if there was one, it would have been repugnant to the AICTE Act. The University Statute 9(7) merely required that the "views" of the State Government be obtained before granting affiliation and this did not amount to obtaining "approval". If the University statute required "approval", it would have been repugnant to the AICTE Act. Point I is decided accordingly.

Their Lordships have discussed point No.2 as under:

Admittedly, the University's inspection report was in favour of the appellant. This is clear from the appellant's letter dated 31-5-1995 to the State Government. The only requirement as per Statute 9(7) was for the University to obtain the "views" of the State Government. Obtaining the "views" of the State Government, as already stated, did not amount to obtaining its "approval". Procedure and conditions for affiliation could not be inconsistent with the provisions of the Central Act, in particular Section 10(k) of the Regulation, and the University could not seek approval of the Government. ***The University was also one of the agencies consulted by the council of AICTE under Regulation 8. Once that was over, and approval was granted by AICTE, if there was any default on the part of the College in compliance with the conditions of approval, the only remedy for the University was to bring those facts to the notice of AICTE so that the latter could take appropriate action."***

Thus, the University ought to have considered the grant of final or further affiliation without waiting for any approval from the State Government and should have acted on the basis of the permission granted by AICTE and other relevant factors in the University Act or

statutes, which are not inconsistent with the AICTE Act or its Regulations."

The ratio of *Jaya Gokul Education Trust* case is that there is no statutory requirement for obtaining the approval of the State Government and the University has to grant the affiliation without waiting for any approval from the State Government. In the present case also the University was consulted by the Council vide communication dated 27th March, 2007 and its opinion was solicited within 30 days from the receipt of the proposal.

A Division Bench of this Court in case ***Shimla Education Society and Trust Versus State of H.P. & another***, CWP No. 1046/2007 decided on 9.8.2007 after taking into consideration the pleadings of the parties had culled out the following points for consideration:

1. **Whether the provisions of the National Council for Teacher Education Act, 1993 occupied the field and if so was it necessary to obtain the NOC from the State Government or any other authority?**
2. **Whether any policy framed by the State Government requiring such approval be void?**
3. **Whether the order of rejection passed by the State Government on 22.6.2007 was valid on merits?**
4. **Whether the University should have granted the affiliation to the petitioner institute solely on the basis of the permission by the National Council for Teacher Education?**

The Court after taking into consideration the salient provisions of the All India Council for Teacher Education Act, 1993 and on the basis of the definite law laid down by the Hon'ble Supreme Court had answered the points (supra) in the following manner:

"The upshot of the above discussion is that since the provisions of the National Council for Teacher Act, 1993

occupied the field, the State Government could not frame any policy in the same area. The policy framed by the State is unenforceable being repugnant to the Central Act. Consequently the State could not force the petitioner to obtain a NOC on the basis of the policy and the rejection letter dated 22.6.2007 is not valid in the eyes of law. The policy dated 20.12.2004 framed by the State is liable to be quashed and set aside.

The State has no power to impinge upon the Legislative power of Parliament by framing a policy since as far as coordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is occupied by Entry 66 of List 1 of Schedule VIII of the Constitution.

The policy framed by the State is void being repugnant to the National Council for Teacher Education Act, 1993. The order passed by the State on 22.6.2007 and the order passed by Respondent No.2 University dated 20.7.2007 are a nullity in the eyes of law.

The University should have considered the grant of affiliation without insisting for any NOC from the State Government and should have acted on the basis of the permission accorded by the National Council for Teachers Education."

In view of the two judgments of the Hon'ble Supreme Court and a judgment of this Court cited hereinabove, it is settled law by now that the State Government cannot insist for the 'NOC' and its insistence for the same is repugnant to the All India Council for Technical Education Act, 1987. The University Act, Statute and the Ordinances framed there-under will be deemed to have become unenforceable with regard to the educational institutions covered by the All India Council for Technical Education Act, 1987. In other words section 32 of the H.P. University Act, 1970, Statue 16 and Ordinances 38.2 and 38.6 (h) and (i) would not apply to an institution like the petitioner covered under the All India

Council for Technical Education Act, 1987 and every University (examining body) is obliged to grant affiliation to such institution once the approval has been granted by the All India Council for Technical Education.

Now, this Court has to consider whether binding directions can be issued to the respondent-University to hold special counselling for the petitioner's institute. Mr. R.L. Sood, Sr. Advocate had submitted that the counselling is being conducted on 18th September, 2007 by the respondent-University pursuant to the directions issued by this Court on 27th August, 2007 in CWP No.1228 of 2007. Mr. V. D. Khidta, Advocate submitted that the counselling was already over on 14th August, 2007 and the classes have started in B-Pharmacy Course. Mr. Sood by way of CMP No. 2349 had placed material on record to substantiate his plea that for the academic session 2006-2007, State had conducted the counselling even though the date prescribed for holding counselling was over.

We have considered this matter dispassionately and are of the firm opinion that the academic calendar prepared by the educational institutions is required to be followed scrupulously. Based on this principle in the Ordinance framed by the respondent-University, the dates have been prescribed for submission of applications seeking affiliation. The paramount consideration for prescribing the dates as per the Ordinances 38.2 is that the entire process of approval, affiliation etc. should be over before the academic session begins and there is no disturbance to the academic calendar.

Their Lordships of the Hon'ble Supreme Court have categorically laid down in ***Medical Council of India versus Madhu Singh and Others*** (2002) 7 SCC 258 that mid session admissions should not be

permitted and the time schedule should be fixed for the duration of the course and the period during which admissions can take place. Their Lordships have held as under:

> **"It is to be noted that if any student is admitted after commencement of the course it would be against the intended objects of fixing a time schedule. In fact, as the factual position goes to show, the inevitable result is increase in the number of seats for the next session to accommodate the students who are admitted after commencement of the course for the relevant session. Thought, it was pleaded by learned counsel for Respondent 1 that with the object of preventing loss to the national exchequer such admissions should be permitted, we are of the view that the same cannot be a ground to permit midstream admissions which would be against the spirit of governing statutes. His suggestion that extra classes can be taken is also not acceptable. The time schedule is fixed by taking into consideration the capacity of the student to study and the appropriate spacing of classes. The students also need rest and the continuous taking of classes with the object of fulfilling the requisite number of days would be harmful to the students' physical and mental capacity to study. In fact such a suggestion was held to be grossly inappropriate in *Dr. Dinesh Kumar case.* In para 15, it was observed as under: (SCC p 130)**
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> > **"15. The next question is as to when should the examination be held. Learned counsel for the Union of India as also the Indian Medical Council suggested that it could be done in October this year so that the candidates selected at the entrance examination could join the 1987-88 session from November. In most of the colleges, admission in respect of 85 per cent seats has been completed and actual teaching has either begun or is about to begin. By November a substantial part of the course would have been read. *To meet the situation, learned counsel for the Union of India***

suggested that we should direct the colleges and institutions to have a supplementary course for the students admitted against the 15 per cent vacancies. In the absence of consent from the institutions, it would be difficult to work out that. As it is, there exists a lot of confusion in the field and we do not propose to add to it by giving a direction of the type proposed. **On the other hand it would be appropriate to bring the scheme into operation from the coming year so that all the preliminaries can be properly conducted and in regular course the students can seek admission to the 1988-89 session. We accordingly direct the authorities to hold the examination in the manner directed, in June (sic May) 1988. The Union of India, the Medical Council, the Dental Council, the several States, Universities and Medical Colleges or institutions who are covered by the scheme are directed to comply with these orders in time so as to give full effect to what has been said here."**

There is, however, a necessity for specifically providing the time schedule for the course and fixing the period during which admissions can take place, making it clear that no admission can be granted after the scheduled date, which essentially should be the date for commencement of the course.

In conclusion

(i) there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education;

(ii) even if seats are unfilled that cannot be a ground for making mid-session admissions;

(iii) there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year;

(iv) MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;

(v) different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counselling and the like have to be completed within the specified time;

(vi) no variation of the schedule so far as admissions are concerned shall be allowed;

(vii) in case of any deviation by the institution concerned, action as prescribed shall be taken by MCI."

Their Lordships of the Hon'ble Supreme Court have held in ***Neelu Arora (Ms) and Another versus Union of India and Others*** (2003) 3 SCC 366 that even if some seats are unfilled, students cannot be admitted in mid-stream. Their Lordships have held as under:

When a detailed scheme has been framed through orders of this Court and the manner in which it has to be worked out is also indicated therein, we do not think that if in a particular year there is any shortfall or a certain number of seats are not filled up, the same should be done by adopting one more round of counselling because there is no scope for the third round of counselling under the Scheme. It would not be advisable to go on altering the Scheme as and when seats are found vacant. What is to be borne in mind is that broad equality will have to be achieved and not that it should result in any mathematical exactitude. Out of about 1600 seats, if 250 seats are not filled up for various reasons, we do not think it should result in the third round of counselling. If that process is to be adopted then there will be again vacancies and further filling up of the seats falling vacant will have to be undertaken. In that process, it will become endless until all the seats under the all-India quota are filled

up. That is not the object of the Scheme formulated by this Court. The object was to achieve a broad-based equality as indicated by us at the outset and we do not think that any steps have to be taken for altering the Scheme. Moreover, this Court in *Medical Council of India v. Madhu Singh* has taken the view that there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if seats are unfilled, that cannot be a ground for making mid-session admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. If these aspects are borne in mind, we do not think any reliefs as sought for by the petitioners can be granted under these petitions."

Their Lordships of the Hon'ble Supreme Court in **Mridul Dhar (minor) and another vs. Union of India and others** (2005) 2 SCC 65 have shown severe displeasure to the State functionaries who could not adhere to the time table prescribed by it. Their Lordships have issued the following binding directions for adhering to the time table taking into consideration the cardinal importance of the academic calendar:

"Having regard to the aforesaid, we issue the following directions:

1. **All participating States and Union Territories' Boards of secondary Education shall declare 10+2 result by 10th June of every year and make available the mark sheets to the students by 15th June.**

   The aforesaid condition would not apply to west Bengal for the year 2005. As already noticed, West Bengal would make available to the students concerned the marksheets by 15.6.2005.

   Heads of Boards would be personally liable to ensure compliance.

2. **The timetable mentioned in notification dated 25.2.2004 shall be strictly adhered to by all concerned including States and Union Territories and results of State**

medical/dental entrance examination shall be declared before 15th of June.

3. **The States/Union Territories shall complete the admission process of first round of State-level medical/dental college admission by 25th July i.e. a week before start of second round counseling or allotment of seats under all-India quota. The correct vacancy position shall be intimated by the Chief Secretary of the State/Union Territory to the DGHS by 26th July. It shall be verified by the Head of the institution/or Head of the medical institution/Health Department of the State.**
4. **It shall be the responsibility of all concerned including Chief Secretaries of each State/Union Territory and/or Health Secretaries to ensure compliance with the directions of this Court and requisite time schedule as laid down in the regulations and non-compliance would make them liable for requisite penal consequences.**
5. **All seats in all India quota must be fully disclosed giving details of the date of recognition/renewal of DGHS before a date to be notified by DGHS and the same shall be duly published.**
6. **By 31st October, the States, through the Chief Secretaries/Health Secretaries shall file a report in regard to admissions, with the DGHS giving details about the adherence to a time schedule and admission granted as per the prescribed quota. The recalcitrant states, particularly officers personally will have to face the consequences for violation.**
7. **The DGHS shall file by 31.1.2005 report in regard to feasibility of conducting counseling through the process of video-conferencing.**
8. **The DGHS shall file report within three months of the aspect of section 10-A seats being subjected to 15 per cent all-India quota and about the increase of the quota from 15 per cent to 20 per cent.**

9. **The DGHS shall also file a report within three months on the aspect of constitution of High-Powered Committee/ombudsman.**
10. **The seats allotted upto 15th July, shall also be subjected to the respective State quotas.**
11. **If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year.**
12. **The time schedule for grant of admission to postgraduate courses shall also be adhered to.**
13. **For granting admission, the merit determined by competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or any other mode.**
14. **Time schedule for establishment of new college or to increase intake in existing college, shall be adhered to strictly by all concerned.**
15. **Time schedule provided in the regulations shall be strictly adhered to by all concerned failing which the defaulting party would be liable to be personally proceeded with.**
16. **Copy of the judgment shall be sent to the Chief Secretaries of all the states/Union Territories for compliance.**

Their Lordships in **Medical Council of India vs. Naina Verma and others** (2005) 12 SCC 626 deprecated the mid-session admissions. Their Lordships have held as under:

> **Needless to say that the direction of the High Court was wholly contrary to the decision of this Court in Medical Council of India vs. Madhu Singh in which this Court has categorically laid down that the time schedule framed by MCI should not be inferred with by the Court. The principle is that**

> **the courses having begun, apart from maintaining the discipline in the matter of education., it was imperative that the students had the benefit of education which is to be imparted from the first day on which the students started prosecuting their studies to become doctors ultimately. There is no question of giving a retrospective education in such matters and this is particularly so in matters pertaining to medical training.**

The Hon'ble Supreme Court has only diluted the rigorous of the earlier directions issued in ***Paramjeet Gambhir and another Versus State of M.P. and others,*** (2003) 4 SCC 276 where certain exceptions for adherence to time table for the course were carved out. While doing so, their Lordships have taken into consideration that certain seats which had been surrendered from the All India quota even for the first counselling had been done were not included in the counselling list and before the High Court the State had pleaded that Rule 15.8 had been deleted and the old system of waiting had been repealed. It was in these facts and circumstances of the case that the Hon'ble Supreme Court had permitted the admissions when the initial counselling process was over.

It is thus evident that adherence to the time table for the courses is of paramount consideration and the same in no circumstances should be diluted. It may lead to lowering of academic standard besides causing administrative problems. In the normal circumstances, the Court would have not permitted any counselling even though it is imperative for the University to grant affiliation to the petitioner college, but since the counselling has already been fixed by the University on 18th September, 2007, the Court is making an exception by directing the University to hold the counselling for the students to be admitted to the petitioner's college. The other circumstance is that the course has just begin about a fortnight

back and there won't be large scale violence to the time schedule prescribed after the counselling was over on 14th August, 2007.

We show our displeasure over the manner in which the counselling after counselling was permitted by the respondents for the academic session 2006-07. The parameters of law are to be applied to all uniformly. The State and the University has to prescribe a time table and the same has to be observed without any deviation.

The upshot of the above discussion is that:

(i) **the State has no power to insist for obtaining 'NOC' after the promulgation of the All India Council for Technical Education Act, 1987;**

(ii) **the letter dated 30th August, 2007 is repugnant to the All India Council for Technical Education Act, 1987;**

(iii) **section 32 of the H.P. University Act, 1970, Statute 16, Ordinances 38.2 and 38.6 (h) & (i) will not apply to the technical institutions covered under the All India Council for Technical Education Act, 1987;**

(iv) **the University should have considered the affiliation without insisting for any 'NOC' from the State Government and should have acted on the basis of the approval accorded by the All India Council for Technical Education; and**

(v) **the academic calendar prepared by the University or any other educational institution has to be strictly adhered to and no mid-stream admissions can be permitted.**

For the reasons mentioned in this judgment and on equitable considerations in the peculiar facts and circumstances of this case as have been noticed hereinabove, we have made an exception in the case of the petitioner by permitting the counselling to be held even at this belated stage. However, we do wish clearly to observe and direct that in future strict adherence to the Schedule fixed and prescribed in

Ordinance 38.2 of the University (supra) has to be followed by every one concerned, including the University itself. It is expected that teaching institutions desirous of seeking affiliation or recognition from the university must submit their applications for this purpose to the university by 30th June of the year preceding that in which the teaching institution desires its affiliation or recognition. In terms of the provisions of Ordinance 38.2 (supra), the period can be extended only in rare cases up to 31st December of the year preceding by a specific, speaking and reasoned order to be passed by the Vice Chancellor in terms of the stipulations contained in the said proviso. Any teaching institution therefore which does not adhere to the aforesaid time schedule of 30th June of the year preceding or latest 31st December of the year preceding will not be permitted by this Court to seek affiliation or recognition from the University even though it has obtained the permission/affiliation/no objection from the AICTE.

Accordingly this writ petition is allowed. The letter dated 30th August, 2007 is quashed and set aside. Respondent-University is directed to grant affiliation to the petitioner institute within a week from the date of receipt of certified copy of the judgment with a further direction to allocate the seats to the petitioner institute. The respondent-University is further directed to conduct counselling for the intake of students in the petitioner institute in the B-Pharmacy Course for the academic session 2007-08.

Now as per the observations made hereinabove, the following binding directions are issued to all the Universities situate in the State of Himachal Pradesh and other educational institutions run by the State of Himachal Pradesh as well as private educational institutions:

(i) the institutions are directed to fix a time schedule specifying the duration of the course, the date of

commencement of the course and the last date for admission;

(ii) the institutions are directed to work out and take necessary steps like holding of examination, prescribe counselling etc. within the specified time;

(iii) no counselling will be permitted after the last date of the counselling. There shell be no variation to the time table prescribed so far as the admissions to all the courses are concerned;

(iv) the institutions shall not admit any student mid-stream even if seats are unfilled.

The copy of this judgment shall be sent to the Chief Secretary, Government of Himachal Pradesh and all the Registrars of the Universities situate in the State of Himachal Pradesh as well as to the Secretary of the H.P. Board of School Education for its due compliance.

There shall be no order as to costs.

In view of the disposal of the main case, all the CMPs stand disposed of.

(V.K. Gupta), C.J.

(Rajiv Sharma), J.

September 14, 2007
Awasthi